

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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COURT OF APPEALS, DISTRICT OF COLUMBIA,
APRIL TERM, 1922.

No. 3824.

NO. 17, SPECIAL CALENDAR.

899

ALBERT B. FALL, SECRETARY OF THE INTERIOR,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA, EX RELATIONE, W.
G. LYNN, GUARDIAN OF ROSE LASLEY, AN INCOMPE-
TENT OSAGE INDIAN, ALLOTTEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED MAY 24, 1922.

COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

APRIL TERM, 1922.

No. 3824.

NO. 17, SPECIAL CALENDAR.

ALBERT B. FALL, SECRETARY OF THE INTERIOR,
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VS.

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TENT OSAGE INDIAN ALLOTTEE, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, EX RELATIONE, W. G. Lynn, guardian of Rosa Lasley, an in- competent Osage Indian allottee, petitioner,	} At law, No. 66342.
<i>vs.</i>	
ALBERT B. FALL, SECRETARY OF THE INTERIOR, respondent.	

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1

Petition.

Filed February 6, 1922.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, EX RELATIONE, W. G. Lynn, guardian of Rosa Lasley, an in- competent Osage Indian allottee, petitioner,	} At Law, No. 66342
<i>vs.</i>	
ALBERT B. FALL, SECRETARY OF THE INTERIOR, RE- spondent.	

The petition of the United States of America, on the relation of W. G. Lynn, respectfully represents to this honorable court:

1. That the said W. G. Lynn, is a citizen of the United States and a resident of the State of Oklahoma, and presents this petition as the duly appointed and qualified guardian of Rosa Lasley.

2. That Rosa Lasley, a citizen of the United States, and a resident of Osage County, in the State of Oklahoma, a duly enrolled member of the Osage Tribe, as recorded in the Department of the Interior, and known as Osage allottee No. 222, was, by the county court of Osage County, Oklahoma, having, under an act of Congress of April 18, 1912, jurisdiction of such matters, on January 27, 1919, duly adjudged an incompetent person, and on the same date the said W. G. Lynn was duly appointed and qualified as guardian of the said Rosa Lasley, and at all times since that date the said W. G. Lynn has been, and is now, the duly qualified and legal

2 guardian of the estate of the said Rosa Lasley.

3. That the said Albert B. Fall, respondent herein, is the Secretary of the Department of the Interior of the United States, and is sued in respect to his official duties as hereinafter more particularly set forth.

4. That Congress, by an act approved June 28, 1906 (34 Stats. 539), entitled "An Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes,"

after providing for the preparation of a final roll of the Osage Tribe of Indians and a distribution of the lands among the members of the tribe, provided that the minerals underlying the surface of the Osage lands in Oklahoma should be reserved for the tribe for twenty-five years and held in trust by the United States, and that funds derived from the sale of leases thereon, together with the royalties therefrom and certain other funds, including interest, etc., should be paid quarterly to the enrolled members of the tribe, except in the case of minors, in which case they were to be paid to the parents until the minor arrived at the age of 21. This act also authorized the Secretary of the Interior, in his discretion, upon proper showing, to issue "certificates of competency" to adult members of the tribe, entitling them to convey any of their lands excepting their homestead allotments.

5. That section 3 of an act of Congress entitled "An Act supplementary to and amendatory of the Act entitled 'An Act for the division of the lands and funds of the Osage Nation of Indians in Oklahoma, approved June twenty-eighth, nineteen hundred and six, and for other purposes,'" approved April 18, 1912 (37 Stats. 86), provided:

3 "That the property of deceased and of orphan minor, insane, or other incompetent allottees of the Osage Tribe, such incompetency being determined by the laws of the State of Oklahoma, which are hereby extended for such purpose to the allottees of said tribe, shall, in probate matters, be subject to the jurisdiction of the county courts of the State of Oklahoma."

and directed that all papers filed in such matters before said courts should be served on the superintendent of the Osage Agency at the time of filing, and authorized that official to appear in court for the protection of the interest of the allottee, to investigate the conduct of the guardian, and, where he found the estate being dissipated or wasted, it was made his duty to report the matter to the county court and to take such other and further action in the way of civil or criminal proceedings as might be necessary to protect the interest of the allottee and his estate.

6. That the said W. G. Lynn, as the legal guardian of the said Rosa Lasley, has, since qualifying as such guardian and up until the end of the fiscal quarter, September 30, 1921, been regularly receiving, through the superintendent of the Osage Agency, the pro rata share of the said Rosa Lasley of the interest on trust funds, bonus received from the sale of leases, and the royalties received during the previous fiscal quarter credited to the account of the Osage Tribe of Indians, and has been accounting therefor to the county court of Osage County, having jurisdiction of such matters.

7. That by an act of Congress, approved March 3, 1921, entitled "An Act to amend section 3 of the Act of Congress of June 28, 1906, entitled 'An Act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes'" (41 Stat. 1249), commonly known as the "Extension act," the minerals underlying the lands of the Osages in Oklahoma were further reserved to the tribe and held in trust by the United States until April 7, 1946, and by that act it was further provided:

"SEC. 4. That from and after the passage of this Act the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe having a certificate of competency his or her pro rata share, either as a member of the tribe or heir of a deceased member, of the interest on trust funds, the bonus received from the sale of leases, and the royalties received during the previous fiscal quarter, and so long as the income is sufficient to pay to the adult members of said tribe not having a certificate of competency \$1,000 quarterly except where incompetent adult members have legal guardians, in which case the income of such incompetents shall be paid to their legal guardians, and to pay for maintenance and education to the parents or natural guardians or legal guardians actually having minor members under twenty-one years of age personally in charge \$500 quarterly out of the income of said minors all of said quarterly payments to legal guardians and adults, not having certificates of competency to be paid under the supervision of the Superintendent of the Osage Agency, and to invest the remainder after paying all the taxes of such members either in United States bonds or in Oklahoma State, county, or school bonds, or place the same on time deposits at interest in banks in the State of Oklahoma for the benefit of each individual member under such rules and regulations as the Secretary of the Interior may prescribe: * * *"

8. That there is now due the said W. G. Flynn as guardian of the said Rosa Lasley the pro rata share of the said Rosa Lasley interest on trust funds, the bonuses received from the sale of leases, and the royalties received during the fiscal quarters ending September 30, 1921, and December 31, 1921, amounting to approximately \$9,000.00 and credited to her as an enrolled member of the Osage Tribe of Indians; that the Secretary of the Interior refuses to pay over to the said W. G. Lynn, as guardian of the said Rosa Lasley, the
5 funds now due her, as aforesaid, although such payment has been demanded of him by the relator; and the Secretary of the Interior, through his agent, the superintendent of the Osage Agency, continues to refuse to pay over to the said W. G. Lynn, guardian, the aforesaid funds held by the Interior Department to which his ward, Rosa Lasley, is entitled, or any other funds to which said ward may so become entitled in the future, unless and until the said W. G. Lynn will agree as such guardian to make no further investment in excess of \$1,000.00 out of the funds of his ward, the said Rosa Lasley, in any securities other than those specified in the act of March 3, 1921, hereinbefore referred to.

9. Your relator avers that under the provisions of the Acts of Congress approved June 28, 1906, April 8, 1912, and March 3, 1921, he as the duly appointed and qualified guardian of Rosa Lasley, is entitled to have paid unto him by the Secretary of the Interior the fund now in the hands and under the control of the said Secretary of the Interior to which the said Rosa Lasley is now entitled, and such funds as may hereafter come into the hands or under the control of the Secretary of the Interior, derived from the sale of leases with the royalties therefrom, together with interest on trust funds accruing quarterly thereafter to which the said ward may be entitled, and that the Secretary of the Interior is without authority to

compel the investment of the said fund either in United States bonds or in Oklahoma State, county or school bonds, or to compel the placing of same on time deposit in banks in the State of Oklahoma,

6 but that the relator has the legal right to receive such funds and invest the same for the benefit of the said ward in such securities and in such manner as may be approved by the county court of Osage County, Oklahoma, in accordance with the acts of Congress approved June 28, 1906, and April 18, 1912; and the relator further avers that the duty of the Secretary of the Interior to pay over to him as snch guardian the aforesaid funds is a purely ministerial duty involving no discretion whatsoever on the part of the Secretary of the Interior or his representative, the superintendent of the Osage Agency.

10. The relator, in view of the refusal of the Secretary of the Interior to pay over to him as the guardian of the said Rosa Lasley the fund now in the hands of the said Secretary as aforesaid, is without remedy in the premises unless a remedy be granted him by this honorable court commanding the Secretary of the Interior to pay over to him the aforesaid fund, and that unless such remedy be adjudged, granted and made effectual the relator will be unable to perform his duty to his said ward by the investment of said fund for her benefit under the direction and with the approval of the said county court of Osage County, to which jurisdiction has been given as hereinbefore set forth.

Wherefore, the premises considered, your relator prays:

I. That a writ of mandamus may issue directed to the respondent, Albert B. Fall, Secretary of the Interior, commanding him to pay over to your relator, W. G. Lynn, guardian of Rosa Lasley, her pro rata share of the interest on trust funds, the bonus received from sale of leases and the royalties received by the Secretary
7 of the Interior during the fiscal quarters ending September 30, 1921, and December 31, 1921, respectively, the said fund amounting in all approximately to \$9,000.00.

II. That a rule may issue requiring the respondent, the Secretary of the Interior, to show cause, if any he has, why a writ of mandamus should not issue as herein prayed.

III. That your relator may be granted such other relief as to the court may seem proper and the nature of the case may require.

W. G. LYNN, Gdn.,
Petitioner.

JOHNSON & JOHNSON,
Fairfax, Okla.

J. W. BELLER,
CONRAD H. SYME,
Attorneys for petitioner.

STATE OF OKLAHOMA,
County of Osage, ss:

Before me, H. O. Ostermeyer, a notary public within and for Osage County, Oklahoma, at my office in said State and county, personally appeared W. G. Lynn, guardian, who being by me first duly sworn, on oath says that he is the duly appointed and qualified guardian of

Rosa Lasley, an enrolled member of the Osage Tribe of Indians, designated as Allottee No. 222, the relator named in the foregoing petition; that he has read the foregoing petition by him subscribed, and knows the contents thereof; that the statements of fact therein made as upon personal knowledge are true, and those made upon information and belief he believes to be true.

W. G. LYNN, Gdn.,
Petitioner.

Subscribed and sworn to before me this 12th day of Jany., 1922.

[SEAL.]

O. H. OSTERMEYER.

(My commission expires Mch. 19th, 1924.)

Rule to Show Cause.

Filed February 6, 1922.

* * * * *

Upon consideration of the petition for mandamus herein exhibited it is this 6th day of February, 1922,

Ordered, that the defendant Albert B. Fall, Secretary of the Interior, show cause on the 17th day of February, 1922, at 10 o'clock a. m., if any he has, why he should not be by this court demanded to pay over to the relator, W. G. Lynn, guardian of Rosa Lasley, her pro rata share of the interest on trust funds, or bonus received from sale of leases and the royalties received by him as Secretary of the Interior during the fiscal quarters ending September 30, 1921, and December 31, 1921, respectively, as prayed in said petition, provided that a copy of said petition and this rule to show cause be served upon said defendant on or before the 10th day of February, 1922.

WENDELL P. STAFFORD,
Justice.

9 *Answer to petition and return to rule.*

Filed February 16, 1922.

* * * * *

Comes now Albert B. Fall, Secretary of the Interior, respondent in the above entitled action, and for answer to the petition herein filed as well as by way of return to the rule herein issued, says:

1-7. He admits all allegations of fact in paragraphs 1 to 7, inclusive, contained.

8. Answering the averments of paragraph 8 he says that pursuant to authority in the said act of March 3, 1921, contained, he prescribed regulations governing per capita payments to the Osage Indians on September 26, 1921, pertinent parts of which are as follows:

All enrolled adult Osaga Indians having certificates of competency shall be paid all of their respective shares of bonus and royalties received during the previous quarter, after making deductions as above indicated. Payment shall also be made to Indians of this class of \$500 per quarter for each of their enrolled

minor children, from the income of said minors from oil and gas royalties, bonus and interest on trust funds, for maintenance and education of such minors, and such parents required to file statements with your office before the next quarterly payment that such funds were so used, although itemized statements will not be necessary.

With reference to adult Osage Indians not having certificates of competency, \$1,000 shall be paid to each quarterly, so long as the income from oil and gas, and interest on their funds is sufficient to pay such amount, or full amount where less than \$1,000, except where any adult Indian has a legal guardian, in which case all income available, including any amount in excess of \$1,000 quarterly, shall be paid to such legal guardian. Payment shall also be made to natural guardians or parents not having certificates of competency, who actually have minor members under twenty-one years of age personally in charge, \$500 only out of the income of each of said minors from oil and gas royalties and bonus and interest on trust funds. All moneys paid out in accordance with this paragraph to be expended under the supervision of the superintendent.

10 Payments of entire amounts due shall be made to legally appointed guardians of adults whether restricted or not, they to expend said funds under agency supervision and thereafter account for same to the County Court, as required by Oklahoma laws. Legal guardians actually having minor members personally in charge shall be paid not more than \$500 quarterly out of the income of said minors.

Guardians are, therefore, restricted in the quarterly allowance for enrolled restricted adults or minors and to investments of any remainder in certain securities as designated in the act or deposited in banks to their credit.

No payments shall be made by the superintendent to legal guardians of moneys or restricted enrolled adults or of enrolled minors, unless guardians will first agree to be governed by the provisions of this act and these regulations. Payment shall be made in full of inherited shares to all adults who are not enrolled and to legal guardians of minors not enrolled, and the restrictions and provisions of this act shall not apply to such payments.

That in the administration of said statute he was required to construe said statute and did construe section 4 thereof as meaning and intending that all quarterly payments to legal guardians, either of incompetent adults or minors, and to adults not having certificates of competency, were to be paid under the supervision of the superintendent of the Osage Agency and upon terms or conditions insuring the handling of payments so made in manner and substance not inconsistent with the purpose and terms of the said act; that he held and construed the provisions as to investment of moneys applicable to payments made to legal guardians paid under the supervision of said superintendent; that pursuant to such construction and to the regulations aforesaid the superintendent of the Osage Agency, in the exercise of his supervision over such payments, did require the relator

11 to agree that as guardian of the said Rosa Lasley he would make no further investment of said Lasley funds save in securities specified in said act of March 3, 1921, and he admits that the said superintendent, acting under said regulations, is with-

holding payment of said funds until the said relator will agree to make no further investment in securities other than those specified in said act.

9-10. He is advised that the allegations in paragraphs 9 and 10 amount to mere conclusions of law which he need not answer.

Wherefore, having made complete answer to the petition and return to the rule he prays that said rule may be discharged; that said petition may be dismissed with his reasonable costs and that he may be permitted to go hence without day.

ALBERT B. FALL,
Secretary of the Interior.

EDWIN S. BOOTH,
Solicitor.
C. EDWARD WRIGHT,
Attorney.

DISTRICT OF COLUMBIA, ss:

Albert B. Fall, Secretary of the Interior, being first duly sworn, says that he has read over and is acquainted with the contents of the foregoing answer by him subscribed; that he is informed that the matters of fact therein set forth are true and he believes them to be true.

ALBERT B. FALL,
Secretary of the Interior.

12 Subscribed and sworn to this 16th day of February, 1922,
before me.

[SEAL]

H. G. CLUNN,
Notary Public in and for the District of Columbia.

Demurrer to answer.

Filed February 20, 1922.

* * * * *
Comes now here the petitioner, W. G. Lynn, by his attorneys, D. E. Johnson, James W. Beller, and Conrad H. Syme, and demurs to the answer herein made by the respondent, Albert B. Fall, Secretary of the Interior, and says that said answer is bad in substance.

JOHNSON & JOHNSON,
JAMES W. BELLER,
CONRAD H. SYME.

The matters of law intended to be argued in support of the foregoing demurrer are the following:

1. That under the act of Congress of September 26, 1921, the Secretary of the Interior was without power or authority to require that the interest, shares of bonus and royalties received for adult incompetent Osage Indians, and payable to the duly appointed and qualified guardian of said Indians, should not be paid to said guardian unless said guardian would agree to invest the same,

over and above \$1,000.00, under the supervision of the superintendent of the Osage Agency, acting by direction of the Secretary of the Interior.

2. That the Secretary of the Interior has not the power or authority, under said act of Congress, to withhold from the petitioner, as guardian of Rosa Lasley, the interest on trust funds and bonuses received from the sale of leases and royalties received during the fiscal quarters ending September 30, 1921, and December 31, 1921, because the said guardian refuses to agree that he will invest said fund either in United States bonds or in Oklahoma State, county, or school bonds, or place the same on time deposit in banks in the State of Oklahoma.

3. That the payment by the Secretary of the Interior of said fund to the petitioner, as the legal guardian of Rosa Lasley, incompetent Osage Indian, is a purely ministerial act required by law to be performed by the Secretary of the Interior without the conditions annexed that said fund shall be invested by direction of the Secretary of the Interior under the supervision of the superintendent of the Osage Indians.

Supreme Court of the District of Columbia, Saturday, March 25, 1922.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

Upon consideration of the demurrer of petitioner filed herein to the answer of respondent, it is ordered that it be, and it is hereby sustained.

14

Monday, April 24, 1922.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

It appearing to the court that the demurrer of petitioner filed herein to the answer of respondent was sustained on March 25, 1922; thereupon respondent by his attorney now in open court states to the court that he does not care to amend, but will stand upon his answer.

Wherefore it is considered that the prayers of the petition be granted, that the writ of mandamus issue forthwith, as therein prayed, and that the petitioner recover of respondent his costs of suit, to be taxed by the clerk, and have execution therefor.

From the foregoing judgment the respondent by his attorney in open court notes an appeal to the Court of Appeals of the District of Columbia.

Further upon motion of respondent, it is ordered that the issuance of the writ of mandamus be stayed until the further order of the court.

Assignment of errors.

Filed May 1, 1922.

* * * * *

The court erred

1. In sustaining the demurrer to the answer.
2. In reviewing the Secretary in his construction of a law devolving upon him to administer.
3. In failing to hold that the Secretary was justified in withholding payment to relator under proper construction of the act of March 3, 1921.
4. In failing to hold that the respondent had power and authority to withhold payment to relator save upon his agreement to invest money so received over and above \$1,000 in only those bonds or securities or deposits specified in the act of March 3, 1921.
5. In failing to hold that such payments are subject to the supervision of the superintendent of the Osage Agency under rules and regulations approved by the Secretary of the Interior.
6. In awarding the writ of mandamus.

C. EDWARD WRIGHT,
Attorney for respondent.

Designation of record.

Filed May 1, 1922.

* * * * *

The clerk in making up the transcript of record on appeal will include the following:

1. Petition and rule to show cause.
2. Answer.
3. Demurrer to answer.
4. Notation of order sustaining demurrer.
5. Judgment awarding writ of mandamus.
6. Notation and allowance of appeal.
7. Assignment of errors.
8. This designation.

C. EDWARD WRIGHT,
Attorney for respondent.

16 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 15, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 66342 at law, wherein the United States of America, ex relatione, W. G. Lynn, guardian of Rosa Lasley, an incompetent Osage Indian allottee, is petitioner

and Albert B. Fall, Secretary of the Interior, is respondent, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the City of Washington, in said District, this 22nd day of May, 1922.

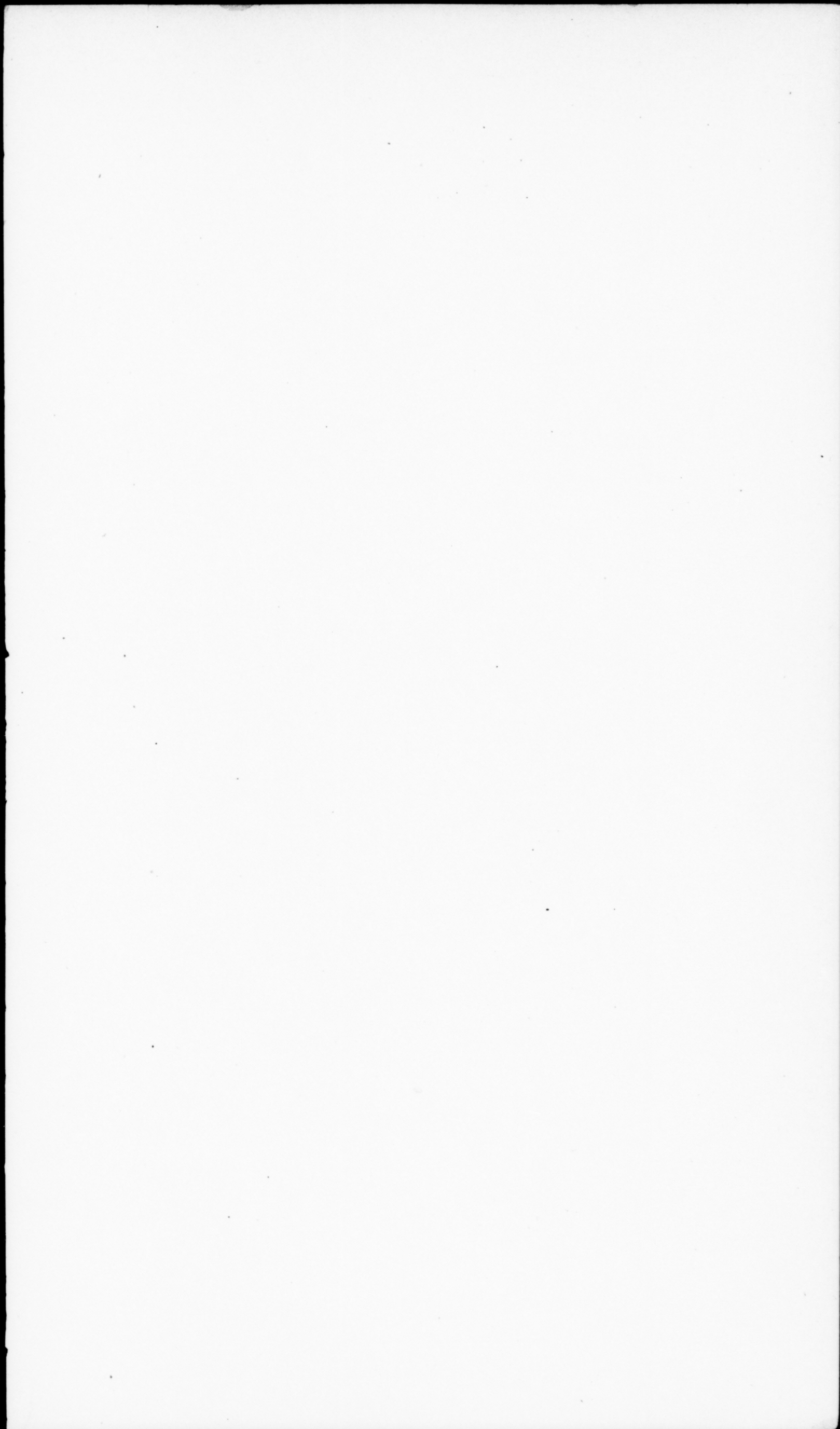
[SEAL.]

MORGAN H. BEACH,
Clerk.

L. M. G/EW.

Endorsed on cover: District of Columbia Supreme Court. No. 3824. Albert B. Fall, Secretary, &c., appellant, vs. The United States of America, ex relatione, W. G. Lynn, guardian, &c. Court of Appeals, District of Columbia. Filed May 24, 1922. Henry W. Hodgess, Clerk.

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COURT OF APPEALS
DISTRICT OF COLUMBIA

FILED

AUG 1 - 1922

Harry W. Bridges
Sept 4

**In the Court of Appeals of the District of
Columbia.**

APRIL TERM, 1922.

No. 3824.

No. 17, SPECIAL CALENDAR.

ALBERT B. FALL, Secretary of the Interior,
v.

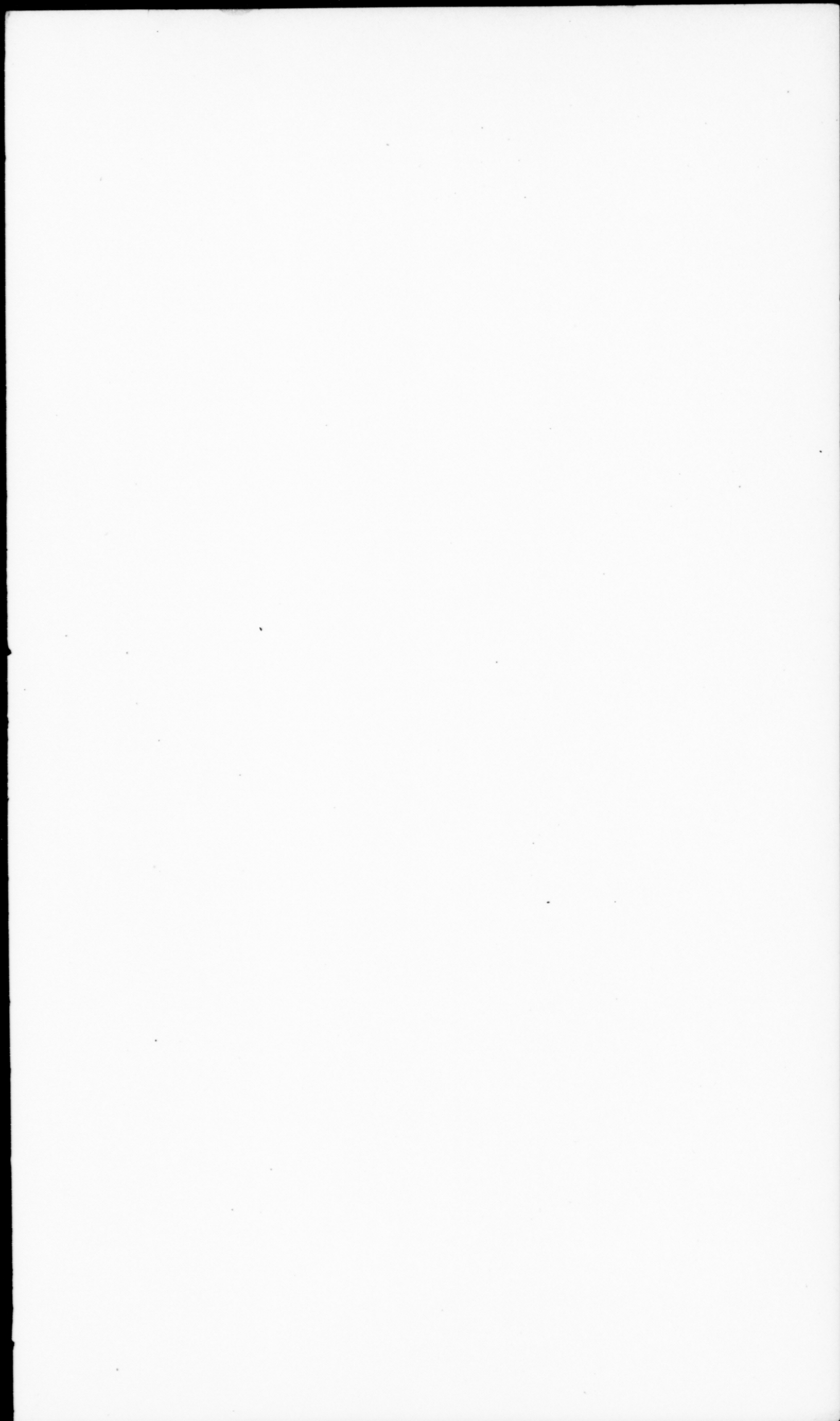
UNITED STATES *ex rel.* W. G. LYNN, Guardian
of Rose Lasley.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

BRIEF FOR APPELLANT.

6. EDWARD WRIGHT,
Attorney.

EDWIN S. BOOTH,
Solicitor, of Counsel.



In the Court of Appeals of the District of Columbia.

APRIL TERM, 1922.

ALBERT B. FALL, Sec- retary of the Interior, v. UNITED STATES <i>ex rel.</i> W. G. LYNN, Guard- ian of Rose Lasley.	}	No. 3824. No. 17, Special Calendar.
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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANT.

The trial court sustained a demurrer to an answer to a petition for mandamus and entered up a judgment awarding the writ upon respondent's election, to stand on his answer. The case is consequently here on respondent's appeal.

THE FACTS.

Rose Lasley is an incompetent Osage Indian allottee under the guardianship of W. G. Lynn by appointment of the County Court for Osage County, Oklahoma. She is entitled to a share of the income of the Osage Tribe. Until the passage of the act of

March 3, 1921 (41 Stat. 1249), her share was paid to her guardian after he had qualified as such. Acting under the authority of said act, the Superintendent of the Osage Indians, under rules and regulations approved by the appellant in administration of said act, required the guardian to agree that he would make no further investments in excess of \$1,000 of his ward's funds, save in certain securities mentioned in section 4 of said act of March 3, 1921, viz, in United States bonds or Oklahoma State, County, or school bonds, or place the same on time deposits in banks in said State of Oklahoma. The guardian refused. Some \$9,000 is consequently tied up. (Record, p. 4.) Hence this action.

The Contentions.

Appellee contends that the act of March 3, 1921, has no application to him. He says (Record, p. 2) that the County Court of Osage County has full jurisdiction over his ward, as an incompetent, under section 3 of the act of April 18, 1912 (37 Stat. 86), an excerpt therefrom being quoted on page 2 of the record. He maintains (Record, p. 3), that as the duly appointed and qualified guardian of this incompetent allottee, he is entitled to have paid to him all funds to which she is entitled, unconditionally, and that, especially, the Secretary is without authority to compel him to invest her money in the specified bonds, etc., for the reason that he has the legal right to receive said funds and to invest them in such manner as may be approved by the County Court

in accordance with the act of June 28, 1906, and the act of April 18, 1912, aforesaid.

The appellant contends that in the administration of the act of 1921 he was obliged to construe its provisions, some of which were not wholly free from doubt, and to formulate rules and regulations for the execution of the purposes of Congress; that as a result of his consideration of the terms of the act he concluded that section 4 thereof required all quarterly payments to legal guardians either of incompetent adults or of minors, as well as to adults without certificates of competency, to be paid under the supervision of the Superintendent of the Osage Agency, upon terms or conditions insuring the handling of the payments in manner and substance consistent with the purpose and terms of the act, including the provision governing investment of money, which he construed as applicable to payments made to legal guardians paid under the supervision of said superintendent and as binding upon them. Hence he approved regulations consonant with that interpretation of the act. (Par. 8 of the answer; Record, pp. 5, 6.) As relator refused to conform to the requirements of the regulations, payment was properly withheld. (Record, p. 6.) The appellant urges that it is not the province of the court to review him in his construction and administration of the statute; but if this case is to be regarded properly as an appeal from his judgment on the correct interpretation of the statute and is to be treated as such by the court, then he contends his construction is correct: i. e., he

has a right to withhold payment from a guardian who refuses to be bound by the act of 1921 in the investment of his ward's funds.

The Judgment Below.

The trial court did not file an opinion. He sustained the relator's demurrer to the answer. The demurrer (Record, p. 7) advanced three points: (a) Lack of power or authority in the Secretary to require a duly appointed and qualified guardian of an Osage incompetent Indian to agree to invest payments over and above \$1,000 under the supervision of the superintendent; (b) Lack of power or authority, under said act, to withhold payments because the relator refuses to invest funds in the United States or Oklahoma State, County or school bonds, or to place same on time deposits in banks in Oklahoma; and (c) That the payment of said funds to the relator is a purely ministerial act which the Secretary is required to perform without any conditions annexed. We may assume that the trial court held all these points to be well taken.

ASSIGNMENT OF ERRORS.

Therefore, we submit that the court erred:

(1) In sustaining the demurrer, in awarding the writ, and in reviewing the Secretary in his construction of a law devolving on him to administer.

(2) In failing to hold that the Secretary is justified in withholding payment to appellee under the proper construction of the act of March 3, 1921—the proper construction being that such payments are subject to

the supervision of the Superintendent of the Osage Agency under rules and regulations approved by the Secretary of the Interior which regulations require withholding payments except upon an agreement to invest the money in excess of \$1,000 in only those bonds, securities, or deposits specified in the act.

ARGUMENT.

Section 4 of the act of March 3, 1921, reads as follows:

That from and after the passage of this Act the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe having a certificate of competency his or her pro rata share, either as a member of the tribe or heir of a deceased member, of the interest on trust funds, the bonus received from the sale of leases, and the royalties received during the previous fiscal quarter, and so long as the income is sufficient to pay to the adult members of said tribe not having a certificate of competency \$1,000 quarterly except where incompetent adult members have legal guardians, in which case the income of such incompetents shall be paid to their legal guardians, and to pay for maintenance and education to the parents or natural guardians or legal guardians actually having minor members under twenty-one years of age personally in charge \$500 quarterly out of the income of said minors all of said quarterly payments to legal guardians and adults, not having certificates of competency to be paid under the supervision of the

Superintendent of the Osage Agency, and to invest the remainder after paying all taxes of such members either in United States bonds or in Oklahoma State, county, or school bonds, or place the same on time deposits at interest in banks in the State of Oklahoma for the benefit of each individual member under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That at the beginning of each fiscal year there shall first be reserved and set aside out of the Osage tribal funds available for that purpose a sufficient amount of money for the expenditures authorized by Congress out of the Osage funds for that fiscal year: *Provided further*, That all just existing individual obligations of adults not having certificates of competency outstanding upon the passage of this Act, when approved by the Superintendent of the Osage Agency, shall be paid out of the money of such individual as the same may be placed to his credit in addition to the quarterly allowance provided for herein.

Section 4 is not a model in English diction. It is part of an act the main purpose of which was to amend the act of June 28, 1906 (34 Stat. 539), so as to extend the period during which minerals were to be reserved to the tribe in common, subject to lease by the tribal council under the direction and with the approval of the Secretary, to April 8, 1946. Senate bill No. 4039 was introduced in the second session of the 66th Congress on March 8, 1920. It consisted of three paragraphs. Section 4 was not a part of it.

It passed the Senate without any provisions such as section 4 contains on January 27, 1921.

It will be remembered that at the October term, 1920, there was pending in this court the case of *Payne, Secretary of the Interior, v. United States ex rel. Mosier*, involving the payment of "bonus" money as "royalty" and the question as to whether a minor's income when paid to the natural parent as directed by the act of 1906 became, to all intents and purposes, the property of the parent. On January 3, 1921, this court, the Chief Justice dissenting, affirmed the judgment below, which was adverse in both respects to the contentions of the Secretary. (50 App. D. C. 219; 269 Fed. 871.) Our contention was that statutory authority to pay out royalty did not include authority to pay out "bonus" money as to which there is no statute directing a disbursement. We also contended for a regulatory device which would conserve the child's money over and above the amount reasonably necessary for his support and education.

In our brief we inserted an excerpt from a hearing on the Indian appropriation bill for 1919 showing the attitude of the Indian parent towards the money paid to him on account of his minor child. We also on page 9 referred to certain facts concerning the improvidence of these Indians adduced at a hearing before a House investigating committee in May, 1920.

When the Senate bill reached the House it went to a committee quite familiar with the situation.

Moreover there had been introduced in the House a bill (5010, 66th Congress, 1st session), by Mr. Snyder, Chairman of the Committee on Indian Affairs, which provided as follows:

That payments of interest on trust funds and moneys derived from leases for oil and gas or other minerals due to any adult member of the Osage Tribe of Indians who has not been granted a certificate of competency may be made under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That payment of such moneys due minors shall be made only to guardians legally appointed in accordance with the laws of the State of Oklahoma: *Provided further*, That such amounts of said moneys which, in the judgment of the Secretary of the Interior, are not needed for the maintenance of the Indians, may in his discretion, be invested for the benefit of the Indian so long as he may deem advisable: *Provided also*, That taxes properly assessed and lawfully due may be paid directly to the officers entitled to receive the same: *And Provided further*, That no sale, mortgage, or other incumbrance of personal property of any such Indian shall be of any validity unless approved by the Secretary of the Interior or such officer as he may designate.

So when the Senate bill was considered in the House Committee, it was reported February 1, 1921, with a section 4, which read as follows:

That from and after the passage of this Act the Secretary of the Interior shall cause to be

paid at the end of each fiscal quarter to each adult member of the Osage Tribe having a certificate of competency his or her pro rata share, either as a member of the tribe or heir of a deceased member, of the interest on trust funds, the bonus received from the sale of leases, and the royalties received during the previous fiscal quarter, and so long as the income is sufficient to pay to the adult members of said tribe not having a certificate of competency \$1,000 quarterly except where incompetent adult members have legal guardians, in which case the income of such incompetents shall be paid to their legal guardians, and to pay for maintenance and education to the parents or natural guardians or legal guardians actually having minor members under twenty-one years of age personally in charge \$500 quarterly, [* * *] all of said quarterly payments to *adults, guardians, and minors* to be paid under the supervision of the Superintendent of the Osage Agency, and to invest the remainder *after deducting an amount sufficient to pay all the taxes* either in the United States bonds or in Oklahoma State, county, or school bonds, or place the same on time deposits at interest in banks in the State of Oklahoma for the benefit of each individual member under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That at the beginning of each fiscal year there shall first be reserved and set aside out of the Osage tribal funds available for that purpose a sufficient amount of money for the expenditures authorized by Congress out of

the Osage funds for that fiscal year: *Provided further*, That all just existing individual obligations outstanding upon the passage of this Act, when approved by the Superintendent of the Osage Agency, shall be paid out of the money of each individual as the same may be placed to his credit in addition to the quarterly allowance provided for herein.

The bill was re-referred and on February 26, 1921, was reported back in the form in which it now appears as an act. The differences in phrasing are indicated by the italicized portions in the above draft and by the brackets which stand for the words "out of the income of said minors" inserted in the final draft of the bill.

Congress evidently took the view we advanced in the *Mosier* case and found it necessary to mention "bonus" specifically in directing what should be disbursed. And it also attempted to conserve the funds of the incompetent adult and the minor.

This suit involves the conservation of an incompetent adult's funds.

Congress had a very good reason for indicating what would be proper investments. It evidently had reason to distrust "loans" on security real—or unreal, purchase of property for "investment" or "use," etc. And Congress was undeterred in its action by any reflection that a county court viséed the action of a guardian.

Consider section 4 in its grammatical construction without immediate thought of this history of the

bill—that is, the conditions requiring a remedy and the remedy sought to be afforded. The subject is “The Secretary of the Interior.” He “*shall cause to be paid* * * * to each adult member * * * having a certificate of competency * * * and to the adult members * * * not having a certificate of competency * * * and to the parents or natural guardians or legal guardians of minors * * * and to invest the remainder * * *.”

The Secretary “shall cause to be paid” and “shall cause * * * to invest.” That is not as it should be in matter of grammar. But it is better English that: “The Secretary of the Interior * * * to invest.”

The section deals with four classes of payees or distributees:

(1) The adult member having a certificate of competency. To him the Secretary “shall cause to be paid” quarterly the interest on trust funds, the bonus money, and the royalties.

(2) The adult member without the certificate of competency. To him the Secretary “shall cause to be paid” \$1,000 quarterly so long as the income is sufficient to permit that amount.

(3) The adult member not only without a certificate of incompetency but having a legal guardian; in which case the payment shall be to the legal guardian.

(4) The minor member. To his parent or natural guardian (a) or his legal guardian (b) the Secretary “shall cause to be paid” \$500 quarterly “to pay for the maintenance and education” of the minor. The

payee, however, must have the minor "personally in charge."

Every quarterly payment "to legal guardians and adults not having certificates of competency"—i. e., every payment of classes 2, 3, and 4 b—is "to be paid under the supervision of the Superintendent of the Osage Agency." This can not mean merely that the physical act of turning over the money every quarter is to be done under the supervision of the Superintendent. That would be meaningless. He does that anyway, to the competent adult and the parent as well as to the others. To "supervise" means to superintend, to direct, to take charge over "with the power of direction." (*State v. C. M. & St. P. Ry. Co.*, 130 N. W. 802, 804; 152 Iowa, 317.) It is like the power of the Secretary over Bureau Chiefs, etc., who, by the several statutes, act "under the supervision of the Secretary of the Interior." It implies control.

Note the change from the phraseology in section 4 of the bill reported in the House February 1, 1921 (p. 9, *ante*) to that in the act: In the first draft, it read "all of said quarterly payments to adults, guardians, and minors to be paid under the supervision of the Superintendent of the Osage Agency." That would give the Superintendent control over the income of competent adults, which Congress did not intend. So the language was changed to read "all of said quarterly payments to legal guardians and adults not having certificates of competency to be paid under the supervision of the Superintendent of

the Osage Agency." The mere act of manual transfer of money is, and has been, made by the superintendent, i. e., by a disbursing officer responsible to him and under his supervision, whether the payments are made to competents or incompetents. Why use the words at all unless something else is meant? Why use the words so that they would apply to competents as well as to payments made on account of incompetents—and then deliberately remodel the expression so as to exclude competents? We must give significance to expressions used in the statute. Unless "under the supervision of the Superintendent" is to be made utterly meaningless, we must regard the expression as reaching beyond the physical transfer of the money to some measure of reasonable control over the payment when made.

Now, if there be no guardian of an incompetent adult, the superintendent may pay over \$1,000 quarterly to the member—but with the right of supervision. He may require the member to pay a certain debt, for example. Under the last proviso of section 4 he may pay all just existing obligations outstanding upon the passage of the act out of the money of the individual as it may be placed to his credit in addition to the quarterly allowance—and that regardless of whether there be a guardian or not. The Superintendent is to see to it that the income is used to the advantage of the incompetent adult; the surplus is to be invested in the manner stated in the act; not any other way.

The Indian without a certificate of competency but having a legal guardian Congress meant to have treated the same way. Else why say anything about supervision? The act states that the payment shall be made to the incompetent adult "except" where he has a legal guardian "in which case the income" shall be paid to the legal guardian. It might well be argued that Congress meant here by income the \$1,000 quarterly (or a less amount if the per capita income be insufficient to permit the \$1,000 payment); that is, that Congress meant that that which would be paid to the incompetent were he without a legal guardian should be paid not to him but to his legal guardian if he had one. In that event, "the remainder" if any, would be invested as provided in that act.

Or it may mean that the Superintendent may turn over the entire income to the legal guardian but with a right of supervision—i. e., power so to control that the purposes of the act would be effective. In other words, the Secretary may sanction regulations to vitalize the spirit of the enactment. Hence the regulation quoted on page 6 of the record:

Guardians are, therefore, restricted in the quarterly allowance for enrolled restricted adults or minors and to investments of any remainders in certain securities as designated in the act or deposited in banks to their credit.

If this can not be done under the act, an incompetent adult, by the device of getting some complacent guardian appointed can get hold of his entire income

and make ducks and drakes of it, without any remainder to invest in any sort of securities.

The "Secretary of the Interior" (*subject*) "shall cause to be paid" (*verb*) to the competent Indian all his income.

The "Secretary of the Interior" (*subject*) "shall cause * * * to pay" (*verb*) \$1,000 to the incompetent ("so long as the income is sufficient").

The "Secretary of the Interior" (*subject*) "shall cause to be paid" (*verb*) to the parents or natural guardians or legal guardians * * * \$500" (to pay for maintenance and education); or this may read "The Secretary of the Interior" (*subject*) "shall cause * * * to pay" (*verb*) (for maintenance and education) to the parents, etc.

There is no subject for the infinitive "to invest" alone. Congress did not stupidly write the sentence to read "The Secretary of the Interior to invest." We must utilize the other words "shall cause" even if it makes for the inelegant expression "shall cause * * * to pay."

The Secretary is not directed "to invest" the remainder. He is directed to cause to be invested just as he is directed to cause to be paid. It makes no difference whether the superintendent is turning over money directly to an incompetent adult or to his legal guardian. The Secretary shall cause any remainder to be invested. If the guardian has a surplus the Secretary is to cause him to invest it in certain ways. This the Secretary does through his regulations.

But the appellee will say while it is true that the Secretary is directed to "cause * * * to invest" something, what is the something? It is "the remainder." What is "the remainder"? Why, the appellee will say, it is what remains in the Secretary's hands after he has made these payments.

We do not think that is what is meant. The Secretary's construction is not in accord with that view. "The remainder," we understand, is the difference between the entire income share of the member whose incompetency or disability (as a minor) is conceded and the amount quarterly to be paid on his account, it making no difference whether paid to the person or to his guardian. Congress was talking about a sum of money remaining after \$1,000 or \$500 is charged off against the quarterly share of the total income. It is immaterial who handles it—the guardian or the superintendent. For an adult \$4,000 per capita is a generous allowance for yearly support. Anything above that should be saved. Surely Congress did not intend that an incompetent adult should enjoy the privilege of unlimited indulgence or squandering through the expedient of having a guardian. It was to strike down exactly that sort of thing that prompted Congress to supplement the provisions of the Act of 1906. If so construed the act contains within itself the means of utterly frustrating the purpose of the legislators, for every incompetent would apply for the appointment of a guardian.

The saving of an Osage Indian's income is not noticeably encouraged by the white people who live in their country. Despite relatively enormous incomes, these improvident Indians incur debt. Traders are always willing to loan money or to extend credit. Note the last proviso to section 4. We again refer to certain facts mentioned in our brief in the *Mosier* case—facts elicited by the House Committee in May, 1920, the same committee that framed this bill; such instances as a man and wife with an income of \$28,845 incurring during the same time that the income accrued an indebtedness of \$19,921.21; another with an income of \$35,586 running in debt to the extent of \$20,544.05.

The Secretary construes the meaning of "remainder" one way; the appellee another. Is the latter's construction so obviously and certainly right as to make it plainly the duty of the Secretary to disregard his own view and give effect to appellee's contention? If not, appellee is not entitled to the writ of mandamus. (*United States ex rel. Hall v. Payne*, 254 U. S. 343, 348.)

Of course, it seems rather odd that a guardian, answerable to a court, should be also subject in some respects to the control of the Secretary. But the whole Indian situation is anomalous. The United States is the guardian of the Indian. A State court has no such jurisdiction over an Indian as it has over its white citizen unless Congress so directs. The State courts function in respect to the Indian and his

property under a Federal, not exclusively a State, enactment. In *Williams v. Hewitt* (181 Pac. 286), the Supreme Court of Oklahoma ruled that the estates of members of the Osage Tribe of Indians are governed by special Federal legislation and that the provisions of general State legislation do not apply. The special legislation referred to was the act of April 18, 1912 (37 Stat. 86), which authorized the Osage County Court to appoint guardians of Osage Indians in special instances—where, for example, a minor child had no living parent. The court held that under the general legislation of the State, the court has no power to appoint a guardian of a minor having a living parent. They also held that minority is not incompetency but merely a disability.

Where local courts are authorized to act in respect to our Indian wards, they function as Federal agencies rather than as State agencies. (*Parker v. Richard*, 250 U. S. 235, 239; *Marcy v. Bd. of Com.*, 144 Pac. 611, 613.)

Appellee secured his appointment as guardian from the county court which was authorized to make the appointment by this act of 1912, *supra*. We do not question the legality of his appointment. We do not maintain that the act of 1912 has been abrogated. What we do urge is that an appointment under the act of 1912 must be considered in the light of any subsequent legislation such as the act of 1921. In other words, the guardian is a Federal agent handling property within Federal control subject to all legislation concerning it. It is

probable that he must account to the judge of the court; and we think it is the duty of the court that he sees to it that the guardian carries out the will of the superguardian speaking through the Congress of the United States. He can give an account of his stewardship to the court. But that does not relieve the Secretary of any duty Congress has seen fit to impose upon him. Under the act of 1921, the Secretary deems it his duty to insist that the guardian shall make such investments as he may have occasion to make in the class of securities indicated in the act.

The court has not the power over an Indian's guardian that in general it has. For instance, any lease of land which the guardian might make is subject to the Secretary's approval—not the court's action. (*La Motte v. United States*, 254 U. S. 570, 577.) And so here the matter of investments is taken out of the court's hand as far as his discretion in approving investments other than as mentioned in the act is concerned.

The appellant's construction of the act lays the duty on the guardian to make investments in no way otherwise than the act authorizes and pursuant to that construction he has approved the regulation set forth in his answer and under which the superintendent acted. We contend that the regulation is consistent with the act, wholly appropriate to its purpose and entirely reasonable. (*La Motte v. United States*, *supra*, pp. 576, 577.)

We think there is no doubt as to what Congress meant. If the language had been "to be invested,"

its relation to "shall cause" could not be denied—and it would most certainly have justified the regulations. At any rate the bungling language required construction, and the Secretary in administering the statute had to use his discretion and judgment, not some other person's judgment, in getting at the legislative intention. His idea may be wrong. Congress can correct it if he is not carrying out its purpose.

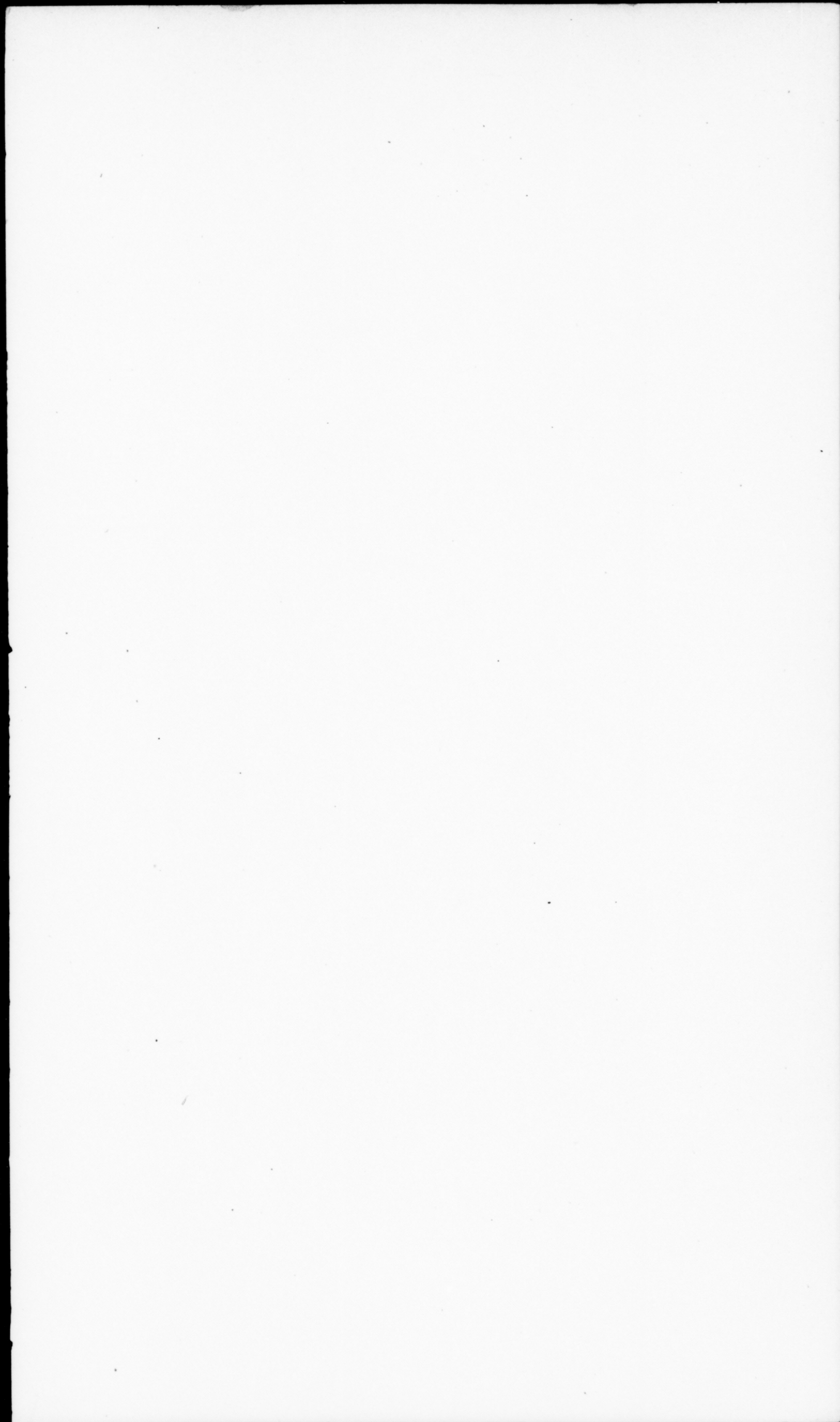
Involving discretion the court should not have interfered by mandamus to control the Secretary's judgment. (*United States ex rel. Alaska Smokeless Coal Company v. Lane*, 250 U. S. 549; *United States ex rel. Hall v. Payne*, 254 U. S. 343; *United States ex rel. Ness v. Fisher*, 223 U. S. 683.)

We submit that the judgment below should be reversed.

C. EDWARD WRIGHT,
Attorney for Appellant.

E. S. BOOTH,
Solicitor, of Counsel.





COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

IN THE
Court of Appeals, District of Columbia

APRIL TERM, 1922.

No. 17, SPECIAL CALENDAR.

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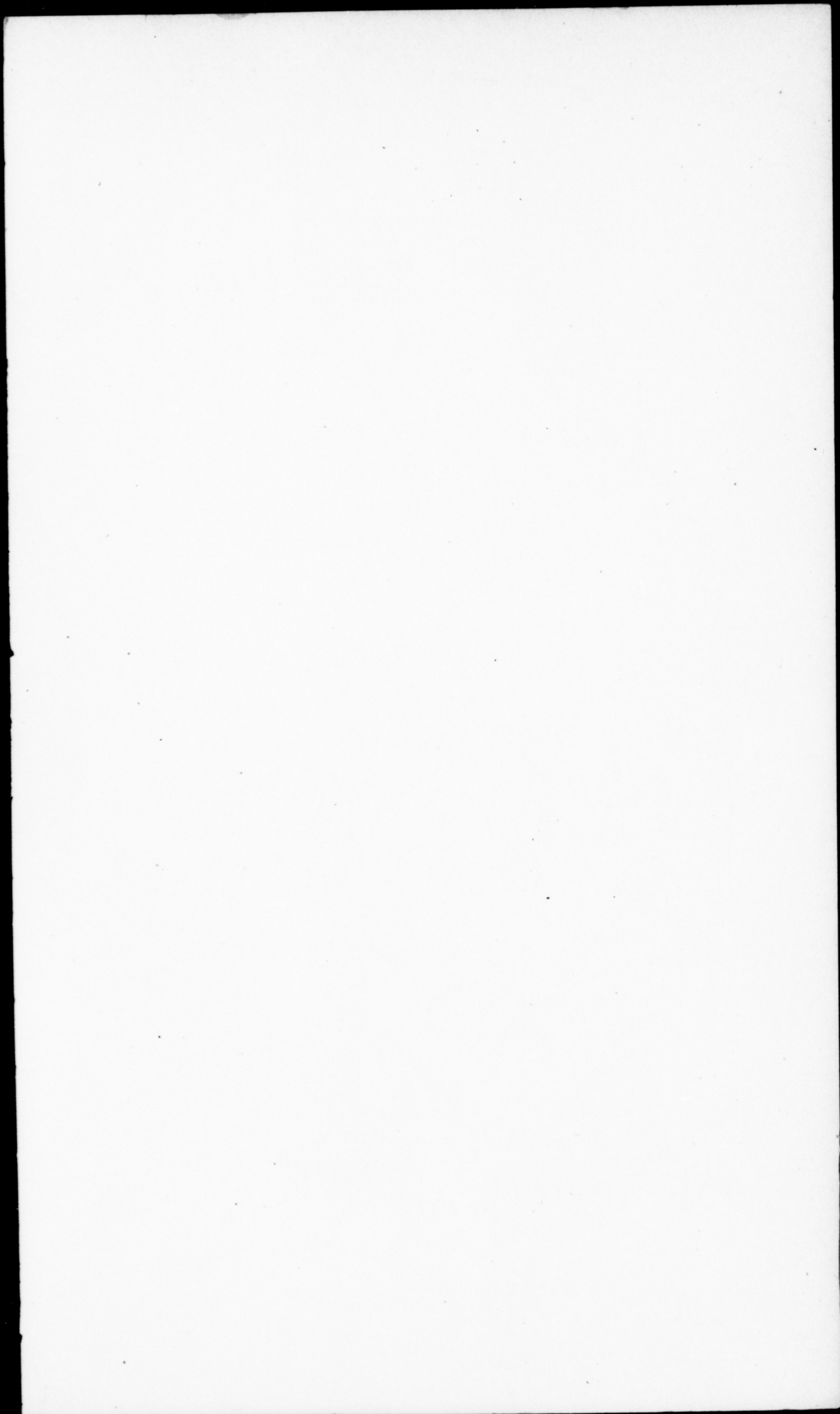
ALBERT B. FALL, SECRETARY OF THE INTERIOR,
Appellant,

vs.

THE UNITED STATES OF AMERICA, EX RELATION, W. G.
LYNN, GUARDIAN OF ROSA LASLEY, AN INCOMPETENT
OSAGE INDIAN ALLOTTEE,
Appellee.

APPEAL FROM THE SUPREME COURT OF
THE DISTRICT OF COLUMBIA.

JAMES W. BELLER,
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Attorneys for Appellee.



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Appellee.

APPEAL FROM THE SUPREME COURT OF
THE DISTRICT OF COLUMBIA.

The Court below entered a judgment awarding the writ of mandamus directed to the Secretary of the Interior to compel him to pay over to petitioner, as Guardian of Rosa Lasley, the share of the income of the Osage Tribe of Indians held by the Secretary to the credit of Rosa Lasley. The issue below was on demurrer to the respondent's answer, which demurrer the trial court sustained, and from which action respondent appeals.

BRIEF FOR APPELLEE.

THE CASE.

The facts are fully set forth in the petition (Rec., pp. 1-4).

The Osage Allotment Act of June 28, 1906 (34 Stat. 539), provided that funds derived from the sale of leases upon Osage oil lands together with interest, royalties, etc., should be paid quarterly to the enrolled members of the tribe, except in cases of minors, where the funds were to be paid to the parents.

The Osage Allotment Act was subsequently amended by the Act of April 18, 1912 (37 Stat. 86), Section 3 of which provides as follows:

“Sec. 3. That the property of deceased and of orphan minor, insane, or other incompetent allottees of the Osage Tribe, such incompetency being determined by the laws of the State of Oklahoma, which are hereby extended for such purpose to the allottees of said tribe, shall, in probate matters, be subject to the jurisdiction of the county courts of the State of Oklahoma, but a copy of all papers filed in the county court shall be served on the superintendent of the Osage Agency at the time of filing, and said superintendent is authorized, whenever the interests of the allottee require, to appear in the county court for the protection of the interests of the allottee. The superintendent of the Osage Agency or the Secretary of the Interior, whenever he deems the same necessary, may investigate the conduct of executors, administrators, and guardians or other persons having in charge the estate of any deceased allottee or of minors or persons incompetent under the laws of Oklahoma, and whenever he shall be of opinion that the estate is in any manner being dissipated or wasted or is being permitted to deter-

iorate in value by reason of the negligence, carelessness, or incompetency of the guardian or other person in charge of the estate, the superintendent of the Osage Agency or the Secretary of the Interior or his representative shall have power, and it shall be his duty, to report said matter to the county court and take the necessary steps to have such case fully investigated, and also to prosecute any remedy, either civil or criminal, as the exigencies of the case and the preservation and protection of the interests of the allottee or his estate may require, the costs and expenses of the civil proceedings to be a charge upon the estate of the allottee or upon the executor, administrator, guardian, or other person in charge of the estate of the allottee and his surety, as the county court shall determine. Every bond of the executor, administrator, guardian, or other person in charge of the estate of any Osage allottee shall be subject to the provisions of this section and shall contain therein a reference hereto; PROVIDED, That no guardian shall be appointed for a minor whose parents are living, unless the estate of said minor is being wasted or misused by such parents: PROVIDED FURTHER, That no land shall be sold or alienated under the provisions of this section without the approval of the Secretary of the Interior."

Pursuant to the authority contained in the Act of 1912, appellee was, by the County Court of Osage County, Oklahoma, appointed and duly qualified as guardian of Rosa Lasley, an incompetent Osage allottee, and up until September, 1921, regularly received the funds belonging to his ward, which he invested under the supervision of the Osage County Court.

Subsequent to September, 1921, appellant refused further to pay over to appellee, as guardian of Rosa

Lasley, any of the ward's funds unless appellee would agree to invest such funds in certain securities specified by appellant, basing his refusal upon the alleged authority contained in Section 4 of the Act of March 3, 1921, entitled "An Act to Amend Section Three of the Act of Congress, June 28, 1906," etc. (41 Stat. 1249), which section reads as follows:

"Sec. 4. That from and after the passage of this Act the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe having a certificate of competency his or her pro rata share, either as a member of the tribe or heir of a deceased member, of the interest on trust funds, the bonus received from the sale of leases, and the royalties received during the previous fiscal quarter, and so long as the income is sufficient to pay to the adult members of said tribe not having a certificate of competency \$1,000 quarterly except where incompetent adult members have legal guardians, in which case the income of such incompetents shall be paid to their legal guardians, and to pay for maintenance and education to the parents or natural guardians or legal guardians actually having minor members under twenty-one years of age personally in charge \$500 quarterly out of the income of said minors all of said quarterly payments to legal guardians and adults, not having certificates of competency to be paid under the supervision of the Superintendent of the Osage Agency, and to invest the remainder after paying all the taxes of such members either in United States bonds or in Oklahoma State, county, or school bonds, or place the same on time deposits at interest in banks in the State of Oklahoma for the benefit of each individual member under such rules and regulations as the Secretary of the Interior may prescribe; PROVIDED, That at the be-

ginning of each fiscal year there shall first be reserved and set aside out of the Osage Tribal funds available for that purpose a sufficient amount of money for the expenditures authorized by Congress out of the Osage funds for that fiscal year; PROVIDED FURTHER, That all just existing individual obligations of adults not having certificates of competency outstanding upon the passage of this Act, when approved by the Superintendent of the Osage Agency, shall be paid out of the money of such individual as the same may be placed to his credit in addition to the quarterly allowance provided for herein."

The Act of March 3, 1921, read in *pari materia* with the Act of June 28, 1906, and the Act of April 18, 1912, is perfectly clear, contains no ambiguity, and, in plain terms, directs the Secretary of the Interior to—

"cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe having a certificate of competency his or her pro rata share, * * * and so long as the income is sufficient to pay to the adult members of said tribe not having a certificate of competency \$1,000 quarterly, *except where incompetent adult members have legal guardians, in which case the income of such incompetents shall be paid to their legal guardians.*"

Section 4 of the Act of March 3, 1921, provides for the payment "of the interest on trust funds, the bonuses received from the sale of leases, and the royalties received during the previous fiscal quarter."

First. "To each adult member of the Osage Tribe having a certificate of competency his or her pro rata share, either as a member of the tribe or heir of a deceased member."

Second. "And so long as the income is sufficient to pay to the adult members of said tribe not having a certificate of competency \$1,000 quarterly."

Third. "*Except where incompetent adult members have legal guardians, in which case the income of such incompetents shall be paid to their legal guardians.*"

Fourth. "And to pay for maintenance and education to the parents or natural guardians or legal guardians actually having MINOR members under twenty-one years of age personally in charge \$500 quarterly out of the income of said minors all of said quarterly payments to legal guardians and adults, not having certificates of competency to be paid under the supervision of the superintendent of the Osage Agency, and to invest the remainder after paying all the taxes of such members either in United States bonds or in Oklahoma State, county, or school bonds, or place the same on time deposits at interest in banks in the State of Oklahoma for the benefit of each individual member under such rules and regulations as the Secretary of the Interior may prescribe."

The supervision of the Superintendent of the Osage Agency, in the payment of these funds, is *restricted* to those—

"for maintenance and education to the parents or natural guardians or legal guardians actually having minor members under twenty-one years of age personally in charge,"

and to the payment to those adults not having certificates of competency for whom guardians had not previously been appointed by the court.

That this was clearly intended by Congress is further shown by the provision contained in the same section directing the Secretary—

“to invest the remainder, after paying all the taxes of such members”

in certain designated securities. The reasoning which actuated Congress in specifying these securities in which the Secretary of the Interior should invest Indian funds is perfectly obvious. The Interior Department has no facilities for investigating the merits of miscellaneous investments, and by designating those securities which are approved by Congress, the Secretary is relieved of any responsibility in so far as such funds may be invested in the securities designated.

It will surely not be contended that there is any *remainder* after payment “to each adult member of the Osage Tribe having a certificate of competency his or her pro rata share,” nor that there is any *remainder* after payment “where incompetent adult members have legal guardians, in which case the income of such incompetents shall be paid to their legal guardian.” This *remainder* to which the Act refers is the balance after payment “for maintenance and education to the parents or natural guardians or legal guardians actually having minor members under twenty-one years of age personally in charge \$500 quarterly out of the income of said minor,” and—

“so long as the income is sufficient * * * to the adult members of said tribe not having a certificate of competency \$1,000.00 quarterly,”

where the adult has no guardian.

There is no reason for any other construction of this Act. Any other construction would not be a “permissible” construction. The duty of the Secretary of the Interior is plain and purely ministerial, the performance of which may be commanded by this court

through the writ of mandamus. (Roberts vs. United States, 176 U. S. 221. Lane vs. Hoglund, 244 U. S. 174. Santa Fe Pacific Railroad Company vs. Lane, 244 U. S. 492. See also recent decision of District of Columbia Court of Appeals in McAlester-Edwards Coal Company vs. Fall, at Law No. 3695.)

Counsel for appellant, in his brief (pp. 10-11), undertakes to sustain his argument by considering the grammatical construction of Section 4 of the Act of March 3, 1921. He says the subject of that section is "the Secretary of the Interior;" that he "shall cause to be paid," etc., "and to invest the remainder." With this we find no fault. The Act clearly intends that the Secretary shall pay over certain shares and a portion of certain other shares, and the remaining portion of the certain other shares he is to invest. If Congress had intended that the legal guardians of adult incompetents should invest their ward's funds in certain specified securities, Congress would undoubtedly have so provided; not only that the Secretary should invest, but that the legal guardians of incompetent adult Osages to whom "the income of such incompetents shall be paid" should invest the same in the securities specified.

Appellant, in his brief (p. 19), also says "the Court" (meaning the County Courts of Oklahoma)—

"has not the power over an Indian's guardian that in general it has. For instance, any lease of land which the guardian might make is subject to the Secretary's approval—not the Court's action,"

and cites LaMotte vs. United States, 254 U. S. 570-577. This statement, without explanation, is mislead-

ing. The reason the County Courts have no authority to approve leases of Osage Indian lands is because the Act of 1906 specifically provides that all such leases must be approved by the Secretary of the Interior.

Counsel for the Government cites *Ness vs. Fisher*, 223 U. S. 683; and *Alaska Smokeless Coal Company vs. Lane*, 250 U. S. 549, and the recent case of *United States ex rel., Hall vs. Payne*, 254 U. S. 343, 348.

In the first place in all of these cases the relators sought to compel the action of the Secretary of the Interior with relation to the execution of instruments of titles to public lands of the United States claimed to have been equitably acquired by the relators under certain stated facts, and sustain the proposition that where, in the exercise of his official duties, particularly with relation to the public lands and their acquisition, the Secretary of the Interior is called upon to interpret statutes of the United States, and where the construction he places upon them, though adverse to the relators, is a permissible one, the Court will not interfere to compel him to adopt a construction which he has thus indicated to be contrary to his judgment in the execution of a duty imposed upon him by law.

It is unnecessary for us to analyze the cases above cited, because with this statement of the law and of the jurisdiction of the courts we find no fault. Our contention is, as heretofore stated, that in the instant case no room is left by the statute for any permissible construction by the Secretary of the Interior except that contended for by the appellee.

The Act of 1912, which gave the County Courts of Oklahoma jurisdiction to appoint guardians of incompetent adult Osage allottees, is not repealed either

expressly or by implication by the Act of March 3, 1921.

The Act of 1912 provides (by Section 3) that—

“the property of * * incompetent allottees of the Osage Tribe, such incompetency being determined by the laws of the State of Oklahoma, which are hereby extended for such purpose to the allottees of said tribe, shall, in probate matters, be subject to the jurisdiction of the County Courts of the State of Oklahoma,”

and under a proviso of Section 5 of that Act—

“no trust funds of * * * a person * * * who is incompetent shall be released and paid over except to a guardian of such person duly appointed by the proper court and after the filing by such guardian and approval by the court of a sufficient bond conditioned to faithfully administer the funds released and the avails thereof.”

In the light of this clearly expressed Act of Congress, not repealed either expressly or by implication by the Act of March 3, 1921, but, on the contrary, in effect, recognized by the latter Act in the provision that the funds belonging to adult incompetent allottees for whom guardians had theretofore been appointed by County Courts should be paid over to such guardians, any construction of the Act of March 3, 1921, which places the guardian of this adult incompetent Osage allottee under the dual and wholly impossible supervision of both the County Courts of Oklahoma and the Superintendent of the Osage Agency is not a “permissible” construction.

Section 6569 of the Revised Laws of Oklahoma of

1910 which controls in respect to guardians appointed by the Oklahoma Courts provides—

“Section 6569. Investments of Proceeds. The County Court on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his wards money in his hands, in real estate, or in any other manner most to the interest of all concerned therein; and the County Court may make such other orders, and give such directions as are needful for the management, investment and disposition of the estate and effects, as circumstances require.”

The instant case furnishes an excellent example of how impossible it is to have this dual supervision. The guardian, having qualified and having furnished bond to faithfully perform the duties incident to guardianship, and to carry out the directions of the Court appointing him, is confronted with directions on the part of the court to invest his ward's funds in real estate security at a profitable rate of interest, and, at the same time, receives an ultimatum from the Superintendent of the Osage Agency that, unless he will agree in writing to invest these funds in certain other securities, no further payments of his ward's funds will be made to him.

Appellant in his brief (pp. 7-10) undertakes by quoting the various drafts of bills in Congress leading up to the Act of March 3, 1921, to show what Congress actually intended. We submit that these several drafts of bills demonstrate clearly that Congress had actually in mind the very question which is here involved, and fully intended in the final draft of the bill to place

the funds of incompetent adult Osages in the hands and under the supervision of their duly appointed guardians. For instance, H. R. 5010 cited on page 8 of appellant's brief, provided—

“that payments of interest on trust funds and moneys derived from leases for oil and gas or other minerals due to any adult member of the Osage Tribe of Indians who has not been granted a certificate of competency may be made under such rules and regulations as the Secretary of the Interior may prescribe.”

Under that provision, if the bill had been enacted into the law, the Secretary of the Interior would undoubtedly have had authority to restrict investment by guardians to any securities he might designate. But, after this bill had been considered by the Committee, it was reported substantially as it was subsequently enacted into the law, except that it contained a provision that—

“all of said quarterly payments to *adults, guardians, and minors* to be paid under the supervision of the Superintendent of the Osage Agency.”

The underscored words were eliminated in the final draft of the bill as it was enacted into law, leaving the supervision of the Osage Agency over only those funds paid to parents and legal guardians of minors and to incompetent adult Osages who have no legally appointed guardians.

The judgment below should be affirmed.

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